

**ASSEMBLY BILL**

**No. 698**

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**Introduced by Assembly Member Skinner**

February 26, 2009

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An act to amend Sections 851 and 853 of the Public Utilities Code, relating to utility property.

LEGISLATIVE COUNSEL'S DIGEST

AB 698, as introduced, Skinner. Utility property.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. The existing Public Utilities Act prohibits, with certain exemptions, any public utility other than a common carrier by railroad, from selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering the whole or any part of specified property necessary or useful in the performance of the public utility's duties to the public, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above \$5,000,000, or for qualified transactions valued at \$5,000,000 or less, having filed an advice letter and obtained a resolution from the commission authorizing it to do so. Existing law requires the commission to determine the types of transactions valued at \$5,000,000 or less that qualify for advice letter handling. Existing law states the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base, or transactions that would trigger the commission's review responsibilities under the California Environmental Quality Act, should not qualify for expedited advice letter review.

This bill would authorize for qualified transactions valued at \$5,000,000 or less for which an advice letter is filed that is uncontested, the executive director of the commission or the director of the division of the commission having regulatory jurisdiction over the utility to approve the advice letter. The bill would delete the requirement that the commission approve the advice letter by resolution. The bill would state the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base, or transactions that would trigger the commission's review responsibilities as lead agency under the California Environmental Quality Act, should not qualify for expedited advice letter review. The bill would authorize the filing of an advice letter for transactions by the public utility if the lead agency has completed the appropriate review under the California Environmental Quality Act for the transaction, and the commission is the responsible agency under the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 851 of the Public Utilities Code is  
2 amended to read:  
3 851. ~~No~~A public utility, other than a common carrier by  
4 railroad subject to Part I of the Interstate Commerce Act ( 49  
5 U.S.C. Sec. 10101 et seq.), shall *not* sell, lease, assign, mortgage,  
6 or otherwise dispose of, or encumber the whole or any part of its  
7 railroad, street railroad, line, plant, system, or other property  
8 necessary or useful in the performance of its duties to the public,  
9 or any franchise or permit or any right thereunder, ~~nor~~ or by any  
10 means whatsoever, directly or indirectly, merge or consolidate its  
11 railroad, street railroad, line, plant, system, or other property, or  
12 franchises or permits or any part thereof, with any other public  
13 utility, without first having either secured an order from the  
14 commission authorizing it to do so for qualified transactions valued  
15 above five million dollars (\$5,000,000), or for qualified  
16 transactions valued at five million dollars (\$5,000,000) or less,  
17 filed an advice letter and obtained ~~a resolution~~ *approval* from the  
18 commission authorizing it to do so. *If the advice letter is*  
19 *uncontested, approval may be given by the executive director or*  
20 *the director of the division of the commission having regulatory*

*jurisdiction over the utility.* The commission shall determine the types of transactions valued at five million dollars (\$5,000,000) or less, that qualify for advice letter handling. For a qualified transaction valued at five million dollars (\$5,000,000) or less, the commission may designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. Absent protest or incomplete documentation, the commission shall approve or deny the advice letter within 120 days of its filing by the applicant public utility. The commission shall reject any advice letter that seeks to circumvent the five million dollars (\$5,000,000) threshold by dividing ~~what is~~ a single asset with a value of more than five million dollars (\$5,000,000), into component parts, each valued at less than five million dollars (\$5,000,000). Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the advice letter and ~~resolution~~ *approval* from the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 ~~of this part~~, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

~~Nothing in this~~ *This section shall does not* prevent the sale, lease, encumbrance or other disposition by any public utility of property that is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property that is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with that property in good faith for value, provided that ~~nothing in this section shall~~ *does not* apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

SEC. 2. Section 853 of the Public Utilities Code is amended to read:

853. (a) This article does not apply to any person or corporation which transacts no business subject to regulation under this part, except performing services or delivering commodities

1 for or to public utilities or municipal corporations or other public  
2 agencies primarily for resale or use in serving the public or any  
3 portion thereof, but shall apply to any public utility, and any  
4 subsidiary or affiliate of, or corporation holding a controlling  
5 interest in, a public utility, if the commission finds, in a proceeding  
6 to which the public utility is or may become a party, that the  
7 application of this article is required by the public interest.

8 (b) The commission may from time to time by order or rule,  
9 and subject to those terms and conditions as may be prescribed  
10 therein, exempt any public utility or class of public utility from  
11 this article if it finds that the application thereof with respect to  
12 the public utility or class of public utility is not necessary in the  
13 public interest. The commission may establish rules or impose  
14 requirements deemed necessary to protect the interest of the  
15 customers or subscribers of the public utility or class of public  
16 utility exempted under this subdivision. These rules or requirements  
17 may include, but are not limited to, notification of a proposed sale  
18 or transfer of assets or stock and provision for refunds or credits  
19 to customers or subscribers.

20 (c) The provisions of Sections 851 and 854 that prohibit any  
21 assignment, acquisition, or change of control without advance  
22 authorization from the commission, do not apply to the transfer of  
23 the ownership interest in a water utility, with 10,000 or fewer  
24 service connections, from a decedent to a member of the decedent's  
25 family in the manner provided in Section 240 of the Probate Code  
26 or by a will, trust, or other instrument.

27 (d) It is the intent of the Legislature that transactions with  
28 monetary values that materially impact a public utility's rate base  
29 should not qualify for expedited advice letter treatment pursuant  
30 to this article. It is the further intent of the Legislature that the  
31 commission maintain all of its oversight and review responsibilities  
32 subject to the California Environmental Quality Act, and that public  
33 utility transactions that jurisdictionally ~~trigger~~ *require* a review by  
34 *the commission, as the lead agency*, under the act should not  
35 qualify for expedited advice letter treatment pursuant to this article.  
36 *An advice letter may be filed for transactions by the public utility*  
37 *if the lead agency has completed the appropriate review under the*

- 1 *California Environmental Quality Act for the transaction, and the*
- 2 *commission is the responsible agency under the act.*

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